

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 24-015351

**EDWARD ROSS,
Petitioner**

Case No.: N/A

v

Agency:

**CITY OF TROY,
Respondent**

Case Type: PA-Political Activity

Filing Type: Appeal

**Issued and entered
this 12th day of September 2025
by: Thomas A. Halick
Administrative Law Judge**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

Procedural History

This proceeding is held pursuant to the authority provided in Section 6(1) of the Political Activities by Public Employees Act, MCL 15.401 *et seq.* (the Act or Political Activities Act), and the Administrative Procedures Act, MCL 24.101 *et seq.*

On June 13, 2024, Petitioner Edward Ross filed a “Complaint of Unlawful Political Activity” (Complaint) filed with the Michigan Office of Administrative Hearings and Rules (MOAHR) against Respondent City of Troy, under the Political Activities Act.

On August 20, 2024, Respondent filed a “Statement of the City of Troy’s Position,” in response to the Complaint.

After prehearing motions were resolved, including oral argument, an evidentiary hearing was scheduled for March 25, 2025. The hearing was held as scheduled before Administrative Law Judge (ALJ) Thomas A. Halick and concluded on March 25, 2025.

Petitioner called the following witnesses: Edward Patrick Ross (Petitioner); Peter Hullinger, Troy Fire Chief (adverse witness); Robert M. Reid, Chief of Police for the City of Pleasant Ridge.

Respondent called the following witnesses: Rob Malesyk, Troy Chief Financial Officer; Peter Hullinger, Troy Fire Chief.

Petitioner offered the following exhibits, which were admitted into the record as evidence.

- Exhibit P-1 Troy Fire Department Policies.
- Exhibit P-2 W2 form issued by City of Troy to Edward Ross.
- Exhibit P-3 City of Troy VFIP-Actives and Leaves of Absence as of April 30, 2023.
- Exhibit P-4 Chief Hullinger letter, dated July 24, 2023.
- Exhibit P-5 Chief Hullinger letter, dated May 1, 2024.
- Exhibit P-6 IRS Opinion – Issues for Firefighters.
- Exhibit P-7 State of Michigan Attorney General Opinion 1977-1978 Mich Op Atty Gen 689.
- Exhibit P-8 Social Security Program Operations Manual System (POMS) RS 02101.260 Employment Status of Volunteer Firefighters.

Respondent offered the following exhibits, which were admitted into the record as evidence.

- Exhibit R-A 2/13/2019 Letter extending volunteer firefighter position to Edward Ross.
- Exhibit R-B 4/16/2024 Affidavit of Identity for Edward Ross to run for City Council.
- Exhibit R-C 5/1/2024 Letter terminating volunteer service of Edward Ross.
- Exhibit R-D Troy Fire Department Policy 1003 - member speech, expression and social networking.
- Exhibit R-E Excerpts from Troy webpage - upcoming changes to City of Troy volunteer firefighters incentive plan (VFIP) and FAQ.
- Exhibit R-F 1/31/2023 Form letter sent to VFIP Members regarding change IRS Form 1099 to IRS Form W-2 as part of closure of VFIP Plan.
- Exhibit R-G 3/28/2023 Form letter sent to all active volunteer firefighters, including Petitioner Edward Ross, regarding the lump sum

distribution resulting from the closing of the VFIP and the calculations to determine petitioner's lump sum payment and evidence of income payment.

- Exhibit R-H April 17, 2023 Meeting Minutes – Troy City Counsel.
- Exhibit R-I 2024 Promotional material created by National Volunteer Fire Council regarding volunteer firefighters - posted on public webpage.
- Exhibit R-J 8/7/2006 Ruling from US Department of Labor- FLSA2006-28.
- Exhibit R-K Tentative agreement between Troy and TFSOA with wages.
- Exhibit R-L 2/7/2025 Deposition transcript of Petitioner Edward Ross in companion civil rights case Number 24-CV-11766, Hon. Robert J. White.

After post-hearing briefs and responses were filed, the record closed on June 23, 2025.

On July 2, 2025, Petitioner filed a Request to File Sur-Reply Brief and/or Reopen Hearing. On July 10, 2025, Respondent, City of Troy, filed its Answer to Petitioner's Motion to File Sur-Reply Brief and/or Reopen Hearing.

On July 23, 2025, the undersigned ALJ issued an Order Denying Motion, which denied Petitioner's Request to File Sur-Reply Brief and/or Reopen hearing.

Issue and Applicable Law

The issue is whether Respondent, City of Troy, has violated the Political Activities by Public Employees Act, MCL 15.401 *et seq.*

MCL 15.401 provides:

As used in this act, "public employee" means an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.

MCL 15.403 provides:

- (1) An employee of a political subdivision of the state may:
 - (a) Become a member of a political party committee formed or authorized under the election laws of this state.

- (b) Be a delegate to a state convention, or a district or county convention held by a political party in this state.
 - (c) Become a candidate for nomination and election to any state elective office, or any district, county, city, village, township, school district, or other local elective office without first obtaining a leave of absence from his employment. If the person becomes a candidate for elective office within the unit of government or school district in which he is employed, unless contrary to a collective bargaining agreement the employer may require the person to request and take a leave of absence without pay when he complies with the candidacy filing requirements, or 60 days before any election relating to that position, whichever date is closer to the election.
 - (d) Engage in other political activities on behalf of a candidate or issue in connection with partisan or nonpartisan elections.
- (2) However, a public employee of a unit of local government or school district who is elected to an office within that unit of local government or school district shall resign or may be granted a leave of absence from his employment during his elected term.

MCL 15.404 provides:

The activities permitted by sections 2 and 3 shall not be actively engaged in by a public employee during those hours when that person is being compensated for the performance of that person's duties as a public employee.

MCL 15.406 provides:

- (1) An employee of a political subdivision of this state whose rights under this act are violated or who is subjected to any of the actions prohibited by section 5 may make a complaint to that effect with the department of labor. The department shall hold a hearing to determine whether a violation has occurred. If a violation has occurred, the department shall so state on the record and may order any of the following:
- (a) Issuance of back pay.
 - (b) Reinstatement as an employee.
 - (c) Attorney fees.
 - (d) Reinstatement of all work-related benefits, rights or privileges which, but for the violation by the employer, would have been accrued by the employee.
- (2) Upon motion by the department to the circuit court, the court may issue an injunction to enforce the order of the department.

- (3) The department of civil service shall promulgate rules for hearing alleged violations of this act by a state employee.
- (4) The department of labor shall promulgate rules for hearing alleged violations of this act by an employee of a political subdivision of this state. The rules shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended.

Findings of Fact

Based upon the entire record in this matter, including the witness testimony and admitted exhibits, the following findings of fact are established:

1. The City of Troy Fire Department (Troy Fire Department or TFD) employs 12 full-time staff members and more than 100 volunteer firefighters. Both the full-time staff and volunteer members must complete the Fire Fighter I & II training programs and be certified by the Michigan Fire Fighters Training Council. Firefighters assigned to each of the City of Troy's six fire stations are on-call 24 hours per day. [Exh. R-E, p 1¹].
2. The Troy Fire Department is the largest volunteer fire department in Michigan. [Ross testimony].
3. Prior to February 13, 2019, Petitioner, Edward Ross, applied for a position as a volunteer firefighter with the City of Troy Fire Department. [Ross testimony Exh. R-A].
4. On or about February 13, 2019, David Roberts, who was then the Fire Chief for the Troy Fire Department, sent a letter to Petitioner offering him the "position of probationary volunteer firefighter with the City of Troy Fire Department." The offer was "contingent upon the passing of the pre-employment medical exam; the passing of the firefighter training academy; and the passing of the physical agility test" [Exh. R-A].
5. Respondent's offer to Petitioner stated that "as a volunteer firefighter, you will receive no direct monetary compensation for your participation. You will be expected to meet current minimum attendance requirements of 50% of the calls for which you are available, and 15 hours of station training per calendar quarter for a total of 60 hours of training annually. You will also be expected to drive and operate all fire apparatus and associated equipment . . . and carry out all assigned firefighting tasks as well as community engagement opportunities. Once appointed,

¹ The page number references to Respondent's exhibits are the page numbers on the PDF file.

you will serve a probationary period for a minimum of one (1) year, or six (6) months after completing the firefighter academy and becoming certified as a Firefighter II, whichever is longer.” Petitioner accepted the offer on February 20, 2019. [Exh. R-A].

6. Petitioner completed required training through the North Oakland Fire Academy. Petitioner attended this training from January through June 2020, two days per week, for about 4 hours per day. This also included hands-on training most every Saturday, including on operation of fire trucks and apparatus. Petitioner passed a final written test and a practical exam to receive the necessary certifications as a firefighter. [Ross testimony].
7. In January 2021, Petitioner’s probationary status ended and he became a regular volunteer firefighter and member of the Troy Fire Department pursuant to TFD policy. [Ross testimony].
8. Petitioner fought numerous fires, including at residential and commercial structures. Some incidents required him to be at the work site fighting a fire for multiple hours. He once worked fighting a fire for approximately 15 hours. [Ross testimony].
9. From 2019 to 2021, Petitioner responded to approximately 90% of incident calls for which he was available. [Ross testimony].
10. On or about April 16, 2024, Petitioner completed and signed an “Affidavit of Identity and Receipt of Filing,” stating that he was running for a seat on the Troy City Council, a nonpartisan office. The special election was held August 6, 2024. [Exh. R-B].
11. On or about May 1, 2024, Peter Hullinger, Fire Chief for the City of Troy (Chief Hullinger) sent a letter to Petitioner informing him that his “employment with the Troy Fire Department has been terminated as of May 1, 2024, due to violation of the City of Troy Fire department Policy 1003, ‘Member Speech, Expression, and Social Networking’ which incorporates City of Troy Administrative Memo 1-P-23, ‘Regulation of Political Activity – City Personnel and Resources.’” The letter further stated that “This termination will preclude you from future consideration of employment by the Troy Fire Department.” [Exh. R-C].
12. Chief Hullinger’s May 1, 2024 letter stated that Petitioner was in violation of Troy Fire Department Policy 1003.4.2, which provides:

1003.4.2 POLITICAL ACTIVITY

Pursuant to City of Troy Administrative Memorandum 1-P-23 "Regulation of Political Activity - City Personnel and Resources" See attachment: 1-P-23 Regulation of Political Activity - City Personnel and Resources 2024-03.pdf :

- This policy applies to all personnel during active status, inactive status, and "on leave" status for whatever reason. This policy does not apply to personnel who have retired, resigned, or have been terminated, or otherwise have separated or severed the personnel relationship with the City of Troy.
- This policy prohibits all City of Troy personnel from the following:
 - Engaging in any political activity during working hours, paid or unpaid, for any candidate, cause, or political organization (including political parties and committees.)
 - Using the position, title, uniform, logo, or other symbol of position with the City of Troy for political purposes.
 - Applying for or holding an appointed City of Troy board or committee position, not including positions held by title of employed position.
 - Filing/applying as a candidate for or holding an elective City of Troy municipal office.

No member of the fire department shall seek, be elected to, or hold any elective position within the government of the City of Troy.

No member shall be prohibited from engaging in political activity, unless otherwise prohibited by law, in violation of department policy, or any time a member is on-duty or in uniform.

Members shall not be coerced or required to engage in political activity.

[Exh. R-C; Exh. R-D].

13. On July 1, 1980, the City of Troy established the City of Troy Plan for Volunteer Firefighters (or VFIP).² The City of Troy described the Plan as "an expression of appreciation for the hours spent in training and responding to fires," as well as "to encourage retention within the Troy Volunteer Fire Department," and "to retain and reward these unpaid volunteers for their service to the community." All volunteer

² It appears that the firefighter incentive plan was "created in 1979", according to Exhibit R-E, p1, but took effect in 1980, but was "established" on July 1, 1980, according to Exhibit R-H.

firefighters, including Petitioner, were beneficiaries of the Plan. [Exh. R-H, pp 4, 11; Exh. R-E, p 1³].

14. On August 25, 2014, the City of Troy established the City of Troy Incentive Trust for Volunteer Firefighters (VFIP Trust) as a governmental trust pursuant to Internal Revenue Code §115. [Exh. R-H, p 3].
15. On or about April 17, 2023, the City of Troy closed the 2014 VFIP and Trust. [Exh. R-G; R-H].
16. As a result of the closure of the 2014 VFIP and Trust, the City of Troy paid Petitioner \$22,856.00, and issued an IRS Form W-2 to Petitioner, stating that the City of Troy had paid Petitioner \$22,856.00 in “wages, tips, or other compensation.” [Exh. P-2]. The amount of the payout was based on the firefighter’s age and total credited service as of April 30, 2023. [Exh. R-G, p 1].
17. After closure of the 2014 VFIP and Trust, the Troy City Council enacted a new incentive plan for the volunteer firefighters: the City of Troy Firefighters Incentive Plan (FIP) and City of Troy Firefighters Incentive Trust (FIP Trust), effective May 1, 2023. Under this new incentive plan, a firefighter is entitled to receive a lump sum payment of 60% of \$75,000.00⁴ after ten years of service, and another \$75,000.00 for each additional five years of service. [Ross testimony; Exh. R-G; Exh. R-H, p 8].
18. Had Petitioner not been terminated from his position as a volunteer firefighter on May 1, 2024, he would have been entitled to \$4,500.00 under the new incentive plan (FIP and FIP Trust). Petitioner seeks reinstatement to his job, retroactive to the date he was terminated, to be granted credit that he would have accrued toward the new incentive plan, and reasonable attorney fees. [Ross testimony; Exh. R-G].
19. If Petitioner were to volunteer for 20 years (from age 45 to age 65) he would be entitled to \$300,000.00 under the existing incentive plan. [Exh. R-F, p 17; Resp. Brief, p 19 (per the PDF file)].
20. Troy Fire Department Policy Directive 103.07 requires that Regular Members of the Department are allowed to be “unavailable for incident response during their normal working hours,⁵ up to a maximum of 60 hours per week.” Under this policy,

³ Page number references for Petitioner’s exhibits are the “bates stamp” numbers on each page of the exhibit.

⁴ Ross testified to the \$75,000.00 figure. Petitioner’s Closing Brief asserts that the amount after ten years is “60% of \$75,000” followed by an additional \$75,000 after each additional five years of service. [Pet. Brief, p 9]. Whether the initial payment is \$75,000.00 or 60% of \$75,000.00, the amounts are substantial.

⁵ “Normal working hours” refers to hours that the firefighter spends working another job.

a firefighter could select up to 60 hours during the week when he is not available to respond to incidents but would be expected to be available the remaining 108 hours of the week. Troy Fire Department Policy Directive 103.07, 2.1.4 provides that incident response is evaluated quarterly and, that “[i]n the event that a member is below 50%⁶ for a calendar quarter, documentation shall be sent to the member via department email, and recorded in the member’s file.” Petitioner always maintained the required number or incident responses during his time as a firefighter. [Exh. P-1, p 45; Ross testimony].

21. Petitioner responded to an average of 10 fire calls per month during his time as a volunteer firefighter. [Ross testimony].
22. Under Troy Fire Department Policy Directive 103.07, 2.1.4.2, “[i]f the annual incident response percentage of a member is less than 50%, that member shall forfeit incentive service credit for all month(s) which that member was below 50% throughout the recorded calendar year.” And, section 2.1.4.3, provides that “[m]embers to fail to maintain 50% availability for 2 consecutive years may be dismissed from the department.” [Exh. P-1, pp 45 – 46; Ross testimony].
23. Troy Fire Department Policy Directive 103.07, 2.2 states the training requirements for Members of the Department. [Exh. P-1, p 46]. Troy Fire Department Policy Directive 105.01 also describes the Training for Members of the Department and requires all members to attend a minimum of eighty (80) hours of training annually. Failure to meet the training requirements subjects a member to disciplinary action and will result in a reduced incentive service credit rate. [Exh. 1, p 71-73].
24. Troy Fire Department Policy Directive 103.7, 2.4 states that firefighters “should reside within the City of Troy, but preferably within 3-miles of their assigned fire station. Documentation may be required by the Fire Chief.” [Exh. P-1, p 47].
25. Troy Fire Department Policy Directive 106.02 provides that active regular members of the Department may take excused annual leave based on years of service. [Exh. P-1, pp 80-81].
26. Troy Fire Department Policy Directive 108.01 governs discipline and provides for a 5-step process for progressive discipline, including a Performance Improvement Plan. [Exh. P-1, pp 92-97].

⁶ “Below 50%” means that the firefighter responds to less than 50% of incidents during hours when firefighter is available.

27. Troy Fire Department Policy Directive 125.01 states, “[i]t shall be the policy of the Fire Department to use Guardian Tracking as a means of documenting and managing employee and member performance.” [Exh. P-1, p 165; Ross testimony].
28. Troy Fire Department Policy Directive 126.01 provides guidelines that restrict firefighter’s use of social media networking. [Exh. P-1 pp 167 - 168].
29. The “City of Troy VFIP - Actives and Leave of Absence” list, as of April 30, 2023, listed the payouts to 134 firefighters that would be made under the Incentive Plan. [Exh. P-3].
30. Petitioner first ran for a seat on the Troy City Council in 2023. At that time he was on a leave of absence from the Troy Fire Department for personal reasons not related to his bid for office. In a letter dated July 24, 2023, Chief Hullinger notified Petitioner that under the city’s policy, Petitioner was prohibited from seeking, being elected to, or holding any elective position for the City of Troy. The letter noted that “[y]ou are able to re-apply to the Troy Fire Department in the future, provided this would not be in conflict with Fire Department policies or the City Charter or laws.” [Exh. P-4]. Petitioner was not elected to the Troy City Council.
31. The Troy Fire Department uses the services of a Fire Chaplain, who “may be a member of the local clergy or a person of high moral values who is certified as a chaplain and who has volunteered to assist the department with entry level counseling.” The job duties include “[c]ounseling fire department personnel in matters related to fire incidents such as fatalities or serious injuries of either victims or firefighters.” [Exh. P-1, p 29].
32. The Michigan Association of Firefighters (Union) is a union that includes volunteer firefighters. The Unions represents firefighters at Troy Fire Department station eight. The Union considers volunteer firefighters to be employees and that Petitioner’s former fire station would be eligible for unionization. [Ross testimony].
33. Petitioner was involved in exploring efforts to unionize the TFD volunteer firefighters. [Exh. R-L, p 44].
34. Troy Fire Department’s volunteer firefighters are covered by workers compensation insurance. [Hullinger testimony].
35. A May 28, 2023 letter to Troy firefighters thanked the firefighters for their dedicated years of service and stated that the City hoped that the firefighters “will continue to serve, and receive additional financial remuneration through such future service through the replacement incentive plan for volunteer firefighters.” [Exh. R-G, p 2].

Conclusions of Law

As the person seeking to establish that Respondent violated the Act as alleged in his Complaint, Petitioner bears the burden to prove his case by a preponderance of evidence. As the Michigan Supreme Court has stated, “[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

MCL 15.406 permits an employee complaint under the Act by one who believes her/his rights under the Act have been violated. This section requires that a hearing be held to determine whether a violation has occurred.

Petitioner alleges that Respondent violated MCL 15.403(1)(c), which provides:

* * *

(1) An employee of a political subdivision of the state may:

* * *

(c) Become a candidate for nomination and election to any state elective office, or any district, county, city, village, township, school district, or other local elective office without first obtaining a leave of absence from his employment. If the person becomes a candidate for elective office within the unit of government or school district in which he is employed, unless contrary to a collective bargaining agreement the employer may require the person to request and take a leave of absence without pay when he complies with the candidacy filing requirements, or 60 days before any election relating to that position, whichever date is closer to the election.

The Act prevents an employer from discharging an employee because the employee became a candidate for elective office. An employee whose rights have been violated (terminated for exercising a protected right) may seek:

- (a) Issuance of back pay.
- (b) Reinstatement as an employee.
- (c) Attorney fees.

(d) Reinstatement of all work-related benefits, rights or privileges which, but for the violation by the employer, would have been accrued by the employee. [MCL 15.406].

Here, the principal issue is whether Petitioner was an employee of the City of Troy. If he was an employee, the facts are clear that Respondent violated the Act by terminating his status as a volunteer firefighter because he filed to run for a seat on the Troy City Council.

Troy's volunteer firefighters worked under the expectation that they would earn money under the 2014 Incentive Plan as long as they met certain requirements. When the 2014 Incentive Plan was closed, the City of Troy issued checks to those who had not yet vested into that plan, based on age and years of service. Petitioner was paid \$22,856.00.

Had Petitioner not been terminated, he would have been entitled to \$4,500.00 under the new incentive plan for his service from May 1, 2023 to May 1, 2024. He would have also been entitled to 60% of \$75,000.00 (\$45,000.00) had he remained a volunteer firefighter for 10 years. If he were to remain a volunteer firefighter for 15 years, he would be entitled to \$75,000.00, and another \$75,000.00 for each additional five years of service thereafter.⁷

The undersigned concludes that this was compensation for Petitioner's service to the City of Troy as a volunteer firefighter.

Michigan courts have applied the common law economic-reality test to determine a worker's status as an employee, independent contractor, or some other status, under many legal scenarios⁸, including both the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001, *et seq.* and the Michigan Payment of Wages and Fringe Benefits Act, MCL 408.471, *et seq.*

In *Michigan Occupational Safety and Health Administration v Yoder Family Farm*, 343 Mich App 77, 89 (2022), the court applied the economic reality test to determine whether a minor (Alvin) who worked on his family's farm was an employee under MIOSHA. In deciding whether Alvin was an employee as that term is used in the act, we adopt the economic-reality test, "the most common tool for discerning whether an employer-employee relationship exists." *Michigan Occupational Safety & Health Admin v Yoder*

⁷ With a maximum of \$300,000.00. [See Petitioner's Reply Brief, p 9].

⁸ See, e.g., *Duckworth v Cherokee Ins Co*, 333 Mich App 202, 219; 963 NW2d 610 (2020), applying the economic reality test in holding that an individual was not an employee under the Michigan Insurance Code, MCL 500.3114(3). The economic reality test has been applied to determine employee status under the Michigan Freedom of Information Act, [See, *Coblentz v City of Novi*, 475 Mich. 558, 719 N.W.2d 73 (2006)].

Family Farm, 343 Mich App 77, 83–84; 996 NW2d 808 (2022), citing *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 234, 761 N.W.2d 284 (2008).

In *Buckley, supra*, the court applied the economic-reality test to determine whether a physician was an employee or an independent contractor under the Payment of Wages and Fringe Benefits Act, the “economic reality test is the most common tool for discerning whether an employee-employer relationship exists. Although primarily applied in the context of remedial legislation, like workers' compensation matters, courts have found the test instructive in other contexts as well.” *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 234; 761 NW2d 284 (2008).

The Payment of Wages and Fringe Benefits Act and MIOSHA are both remedial in nature. The Wages and Fringe Benefits Act includes a broad, inclusive definition of the term employee: “Employee’ means an individual employed by an employer.” MCL 408.471(c).

Similarly, MIOSHA defines “employee” in a broad fashion: “Employee’ means a person permitted to work by an employer.” MCL 408.1005(1).

The Political Activities Act does not define the term “employee” but does include a broad⁹ definition of the term “public employee”: “As used in this act, ‘public employee’ means an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.” MCL 15.401 (emphasis added).

As MIOSHA and the Payment of Wages and Fringe Benefits Act are remedial and intended to protect the rights of workers, so too is the Political Activities Act. While there are some distinguishing features among these Public Acts, the economic realities test applies equally to all of them. An act that is remedial in nature should be liberally construed to achieve its objective. *Barker Bros Constr v Bureau of Safety & Regulation*, 212 Mich App 132, 139; 536 NW2d 845 (1995).

“Michigan courts have consistently applied the economic reality test in the context of social remedial legislation. [footnote omitted] A “remedial law” is “[a] law providing a means to enforce rights or redress injuries” or “[a] law passed to correct or modify an existing law....” *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 235; 761 NW2d 284 (2008).

⁹ The definition is arguably circular, in that it essentially states that a *public employee* is a person *employed* by a *local unit of government*. [See, e.g., *Kelly Servs., Inc v Treasury Dept*, 296 Mich App 306, 312–13; 818 NW2d 482 (2012) – holding that the definition of gross receipts under the former Michigan Single Business Tax Act relies on the definition of sales, and the definition of “sales” relies on the definition of “gross receipts,” the court noted that the definitions are “somewhat circular”].

To the extent that there are different public policy goals underlying the aforementioned public acts, a conclusion reached here under the Political Activities Act on whether a person is an “employee” is limited to the facts and law of this case. The statutory definition of “public employee” in the Act is expressly limited to the Act (“as used in this act”) *Id.* Therefore, if a person is found to be a *public employee* under the Act, it is not determinative as to whether that person is an *employee* in other contexts.

It is worth noting that the legislature has specifically defined an on-call fire fighter to be an employee of a city for purposes of the Worker’s Disability Compensation Act, whether that person is paid or unpaid. MCL 418.161(d). The definition under the Worker’s Disability Compensation Act, although instructive, is not determinative here.

In *Buckley, supra.*, the court set forth the following factors to be considered in applying the economic reality test:

(1) [the] control of a worker's duties, (2) the payment of wages, (3) the right to hire and fire and the right to discipline, and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal.”

Under this test, no one factor is dispositive; indeed, the list of factors is nonexclusive and a court may consider other factors as each individual case requires. However, “[w]eight should be given to those factors that most favorably effectuate the objectives of the statute in question.” *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 235; 761 NW2d 284 (2008) (internal footnotes omitted).

The above factors are appropriately applied to the facts of this case.

First, the evidence establishes that the City of Troy exercised substantial *control* over Petitioner’s duties. As a condition of obtaining status as a volunteer firefighter, Petitioner had to pass a pre-employment medical exam, successfully complete the firefighter training academy, and pass a physical agility test. [Exh. R-A]. And throughout his tenure as a volunteer firefighter, Petitioner was required to meet minimum attendance requirements of 50% of the calls for which he was available, complete 15 hours of station training per calendar quarter for a total of 60 hours¹⁰ of station training annually, drive and operate all fire apparatus and associated equipment, and carry out all assigned tasks as well as community engagement opportunities. Once appointed, Petitioner was required to complete a probationary period for a minimum of one (1) year, or six (6) months after

¹⁰ Troy Fire Department Policy Directive 105.01 also describes the Training for Members of the Department and requires all members to attend a minimum of eighty (80) hours of training per year. It appears that this policy requires 20 hours of training over and above the 60 hours of station training.

completing the firefighter academy and becoming certified as a Firefighter II, whichever was longer. [Exh. R-A].

Petitioner was required to be available to respond to incident calls for 108 hours per week. If Petitioner's annual incident response percentage fell below 50%, he would have forfeited service credits under the incentive plan. Further, he could be dismissed from the department if he failed to maintain 50% availability for a period of two years. [Exh. P-1A, pp 45-46].

All active regular members of the Department may take excused annual leave based on years of service. [Exh. P-1B, pp 80-81]. Failure to meet training requirements subjects the firefighter to disciplinary action and a reduction in incentive service credit. [Exh. 1B, p 71-73]. Firefighters were generally required to live within the City of Troy and preferably within three miles of their assigned fire station. [Exh. P-1A, p 47]. Firefighters are subject to a progressive discipline system. [Exh. P-1B, pp 92-97]. The City of Troy restricts a firefighter's use of social media. [Exh. P-1C, pp 167 - 168]. Respondent imposed restrictions on a firefighter's political activities. [Exh. R-C; Exh. R-D]. Although the nomenclature used does not determine the employee status, it is notable that Respondent, through the Troy Fire Chief, used the word "employment" in the May 1, 2024 letter when terminating Petitioner's "employment," and specified that Petitioner was precluded from "future consideration of employment by the Troy Fire Department." [Exh. R-C]. Therefore, the "control" factor favors a finding that Petitioner was an employee of the Troy Fire Department.

The second factor is "the payment of wages." Petitioner was not paid an hourly wage or a salary. However, in *Yoder*, the court held that "[A] compensation agreement may be 'implied' as well as 'express,' ... and the fact that the compensation was received primarily in the form of benefits rather than cash is in this context immaterial." *Yoder, supra, at 90, citing Tony & Susan Alamo Foundation v Secretary of Labor*, 471 U.S. 290, 291-292, 301, 105 S Ct 1953, 85 L Ed 2d 278 (1985). Petitioner earned over \$22,000.00 as a pro-rata payout from the City's former incentive plan. If reinstated, Petitioner could earn up to \$300,000.00 under the new incentive plan if he were to continue to serve as a firefighter until age 65. These are not nominal amounts.

The City of Troy stated that the new incentive plan was created to "continue to reward the valuable service of the volunteer fire fighters [*sic*]." [Exh. R-E, p 2]. The undersigned ALJ concludes that the old and new incentive plans constitute *valuable consideration* that is compensation for the services rendered by the volunteer firefighters. This factor supports a conclusion that Petitioner was an employee.

Factor three is "the right to hire and fire and the right to discipline." It cannot reasonably be disputed that the City of Troy had the right to hire, fire, and discipline its volunteer firefighters. Petitioner would lose service credits under the incentive plan if he did not

meet the employer's minimum requirements to respond to incident calls. Petitioner was fired from his position as a result of violating the City of Troy Fire Department's policy on political activity. This factor supports a conclusion that Petitioner was an employee.

The fourth factor cited in *Buckly* is whether "the performance of the duties are an integral part of the employer's business towards the accomplishment of a common goal." The City of Troy provides firefighting services to its citizens. The evidence establishes that Petitioner and other volunteer firefighters were integral, and indeed essential, in accomplishing this goal. They are first responders, they are highly trained, and the work is often dangerous. This factor supports a conclusion that Petitioner was an employee of the City of Troy Fire Department for purposes of the Act.

Upon application of the above factors, Petitioner has established by a preponderance of the evidence that he was a "public employee" for purposes of the Political Activities Act. Additional arguments and considerations will be discussed below.

Respondent cites case law and regulations under the federal Fair Labor Standards Act, 29 USC 201 *et seq.*, (FLSA), while at the same time acknowledging that the FLSA is not "directly on point" with the Political Activities Act. The FLSA includes specific, detailed provisions governing the employee or volunteer status of persons who "donate hours of service to a public agency for civic or humanitarian reasons." 29 CFR § 553.104.

Where the Michigan legislature has not provided any specific statutory provisions to guide the determination of employee or volunteer status, the undersigned ALJ declines to import the very specific provisions of the FLSA to the matter at hand. Therefore, the numerous federal cases involving the FLSA cited by Respondent are not persuasive to this ALJ.

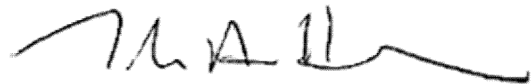
Respondent cites *Michigan State AFL-CIO v Michigan Civil Service Commission*, 455 Mich 720; 566 NW2d 258 (1997). In that case, union workers went to a training seminar sponsored by the Michigan Democratic Party. *Id.* at 723. Some of the employees used leave time to attend the seminar. The court held that the state (as an employer) may not regulate the off-duty political activities of state-classified civil service employees, unless those activities were found to interfere with job performance. *Id.* at 733. There was no question in *Michigan State AFL-CIO* that the union workers were employees under the Act. The court stated that the ruling was "limited to the application of the political freedom act to union leave." *Id.* at 739. Moreover, in the present case, Petitioner was not given the option of taking time off, or a temporary leave of absence, to engage in political activities, but was rather terminated as a result of becoming a non-partisan candidate for elected office. The undersigned ALJ does not find *Michigan State AFL-CIO* to be persuasive or factually on point in this present matter.

After thorough consideration, the undersigned ALJ finds that the remaining arguments and authorities identified by Respondent in its post-hearing brief lack merit and do not undermine the conclusions reached herein.

Summary and Remedy

Petitioner has proven by a preponderance of the evidence that Respondent violated his rights under the Political Activities Act. Petitioner, as a public employee under the Act, has the right to become a candidate for elective office without first obtaining a leave of absence from his employment. The Act provides that the employer *may* require the employee to take a leave of absence when the employee complies with candidacy requirements or 60 days before the election, whichever date is closer to the election. Instead of complying with the statute, however, Respondent terminated Petitioner's employment, violating Petitioner's rights under MCL 15.403(1)(c). Therefore, Petitioner is entitled to the following relief: 1) reinstatement to his position as a City of Troy volunteer firefighter retroactive to May 1, 2024; 2) full service credit towards the City of Troy Firefighters Incentive Plan (FIP) and City of Troy Firefighters Incentive Trust (FIP Trust), that took effect May 1, 2024; and 3) reasonable attorney fees.

Within 21 days after the issuance of this Decision, Petitioner may file a post-hearing motion for attorney fees with a bill of costs and narrative/description to support the attorney fees incurred as a result of this administrative proceeding. Respondent may file a response to a motion for attorney fees, which is due 14 days after service of a motion for attorney fees.



Thomas A. Halick
Administrative Law Judge

Appeal Procedure

Mich Admin Code, R 408.22902(3) provides that:

The decision of the hearings examiner shall be deemed to be the decision of the department of consumer and industry services¹¹ and shall be final and appealable pursuant to sections 101 to 106 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.301 to 24.306 of the Michigan Compiled Laws.

Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders

Pursuant to Mich Admin Code, R 792.10120(2)(i), the state agency that is a party to this matter, and/or referred this matter to MOAHR shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication,
by **email (preferred)** to: MOAHR-GA@michigan.gov; or by **regular mail** to:
MOAHR-GA, P.O. Box 30695, Lansing,
Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).

¹¹ The relevant hearings office within the former Department of Consumer and Industry Services is now within the Department of Licensing and Regulatory Affairs (LARA).

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 12th day of August 2025.

C. Gibson

C. Gibson
Michigan Office of Administrative
Hearings and Rules

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